NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc.
4520 East-West Highway
Bethesda, Maryland 20814

102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
102-377

TAX EXTENSION ACT OF 1991

NOVEMBER 25, 1991.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3909]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3909) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
I. General reasons for change	2
II. Description of tax provisions expiring in 1991	2
1. A'location and apportionment of research and experimental expenses	2
2. Tax credit for qualified research expenditures	7
3. Exclusion for employer-provided educational assistance	9
4. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations	10
5. Targeted jobs tax credit	10
6. Business energy tax credits for solar and geothermal property	11
7. Tax credit for low-income rental housing	12
8. Qualified mortgage bonds and mortgage credit certificates	13
9. Qualified small-issue manufacturing bonds	14
10. Deduction for health insurance costs of self-employed individuals	15
11. Tax credit for orphan drug clinical testing expenses	16
12. Minimum tax exception for gifts of appreciated tangible property	17
III. Description of revenue-raising provision	18
1. Modify required corporate estimated tax payments	18
IV. Budget effects of the bill	18
V. Vote of the committee and other matters to be discussed under House Rules	19

59-006

H783-30

I. General Reasons for Change

In order to minimize the disruption to individuals and businesses by the expiration of certain tax provisions at the end of 1991, the Committee believes it appropriate to enact a short-term extension of expiring provisions. A modification to the manner in which corporations make estimated tax payments is adopted to finance the cost of their short-term extension.

However, the Committee is concerned that revenue constraints have led to an intolerable situation in which taxpayer planning is disrupted by the constant uncertainty about the availability of certain tax provisions. The Committee recognizes that the budget deficit does not permit the adoption of unlimited tax incentives. However, the Committee also believes that certain of the expiring tax provisions may encourage taxpayer behavior that the Congress wished to encourage. Accordingly, the Committee hopes at the earliest opportunity to make a reasoned judgment with respect to whether each individual provision should be extended permanently provided that appropriate revenue sources can be found to offset the cost of such permanent extensions.

II. Description of Tax Provisions Expiring in 1991

1. Allocation and apportionment of research and experimental expenditures (sec. 101 of the bill and sec. 864(f) of the Code)

PRESENT LAW

Foreign tax credit and source rules

Under the Code, each item of income is assigned either a U.S. source or a foreign source. The foreign tax credit for foreign taxes paid on foreign source income is limited to the amount of U.S. tax otherwise payable on foreign source income. The foreign tax credit is not available against U.S. tax on U.S. source income. (This is known as the foreign tax credit limitation.) A shift in the source of income from foreign to U.S. may increase net U.S. tax for some taxpayers by reducing the foreign tax credit limitation.

In determining foreign source taxable income for purposes of computing the foreign tax credit limitation, and for other tax purposes, taxpayers are required to apportion expenses between foreign source income and U.S. source income (Code secs. 861–864). A shift in the apportionment of expenses from U.S. source to foreign source gross income decreases foreign source taxable income. This decrease may increase U.S. tax by reducing the foreign tax credit limitation.

Research and experimental expense allocation regulation

Treasury regulation section 1.861–8 (promulgated in 1977) sets forth detailed rules for allocating and apportioning several categories of expenses, including deductible research and experimental expenditures ("research expenses"). The regulation provides that research expenses are ordinarily considered definitely related to all gross income reasonably connected with one or more of 32 product categories based on two-digit classifications of the Standard Industrial Classification ("SIC") system. Research expenses are not

traced solely to the income generated by the particular product which benefited from the research activity. Instead, these expenses are associated with all the income within the SIC product group in which the product is classified.

The Treasury regulation contemplates that taxpayers will sometimes undertake research solely to meet legal requirements imposed by a particular governmental entity with respect to improvement or marketing of specific products or processes. In some cases, such research cannot reasonably be expected to generate income (beyond de minimis amounts) outside that governmental entity's jurisdiction. If so, the deductions allowable for such associated research expense are allocated solely to gross income from the geographic source that includes that jurisdiction.

After research expenses incurred to meet legal requirements are allocated under the above rule, any remaining research expenses are generally apportioned to foreign source income based on the ratio of total foreign source sales receipts in the SIC product group with which the expenses are identified to the total such worldwide sales receipts in that product group (the "sales" or "gross receipts" method). In computing this fraction, sales by a party controlled or uncontrolled by the taxpayer may be taken into account if the party can reasonably be expected to benefit from the research expense. However, the regulation provides that a taxpayer using the sales method may first apportion at least 30 percent of research expense remaining after allocation to meet legal requirements exclusively to income from the geographic source where over half of the taxpayer's research and development is performed.

Thus, for example, a taxpayer that performs 50 percent or more of its research and development in the United States may automatically apportion at least 30 percent of its remaining research expense to U.S. source income. A taxpayer can choose to apportion to the geographic source where research and development is performed a percentage of research expense significantly greater than 30 percent if the taxpayer establishes that the higher percentage is warranted because the research and development is reasonably expected to have a very limited or long-delayed application outside that geographic source.

Alternatively, subject to certain limitations, a taxpayer may elect to apportion its research expense remaining after any allocation to meet requirements under one of two optional gross income methods. Under these optional methods, a taxpayer generally apportions its research expense on the basis of relative amounts of gross income from U.S. and foreign sources. If a taxpayer makes an automatic place-of-performance apportionment, the taxpayer may not use either optional gross income method.

The basic limitation on the use of the optional gross income methods is that the respective portions of a taxpayer's research apportioned to U.S. and foreign source income using these methods can not be less than 50 percent of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance apportionment methods.

If this 50-percent limitation is satisfied with respect to both income groupings, the taxpayer may apportion the amount of its research expense that remains after allocation under the legal re-

quirements test already on the basis of foreign and U.S. gross income. If the 50-percent limitation is not satisfied with respect to one of the income groupings, then the taxpayer must apportion to that income grouping 50 percent of the amount of its research expense which would have been apportioned to that income grouping under the sales and place-of-performance methods. A taxpayer electing an optional gross income method may be able then to reduce the amount of its research expense apportioned to foreign source income to as little as one-half of the amount that would be apportioned to foreign source income under the sales method.

For example, consider a taxpayer with $110 of U.S.-performed research expense and equal U.S. and foreign sales. Assume that $10 of the research expense is to meet U.S. legal requirements and is allocated to U.S. source income. Of the remaining $100, 30 percent ($30) is exclusively apportioned to U.S. source income under the automatic place-of-performance rule and the remaining $70 is divided evenly between U.S. and foreign source income, using the sales method. Thus, under this method $35 would be allocated to foreign source income and $75 would be allocated to U.S. source income. Under the optional gross income methods, the $35 of research expense allocated to foreign sources can be reduced as much as 50 percent, to $17.50. This can occur, for example, if the foreign sales were made by a foreign subsidiary that did not repatriate earnings to the U.S. corporation, and thus a disproportionately high fraction of the U.S. corporation's income is from U.S. sources.

The optional gross income methods apply to all of a taxpayer's gross income, not gross income on a product category basis.

Statutory allocation of research and experimental expenses

The Economic Recovery Tax Act of 1981 (ERTA) provided that, for a taxpayer's first two taxable years beginning within two years after the date of its enactment (August 13, 1981), all research and experimental expenditures (within the meaning of sec. 174) paid or incurred in those years for research activities conducted in the United States were to be allocated or apportioned to income sources within the United States (sec. 223 of ERTA).

This two-year moratorium was effectively extended for two additional years by the Tax Reform Act of 1984 (the "1984 Act"). Under section 126 of the 1984 Act, for taxable years beginning generally after August 13, 1983, and on or before August 1, 1985, all of a taxpayer's research and experimental expenditures (within the meaning of sec. 174) attributable to research activities conducted in the United States were to be allocated to sources within the United States for purposes of computing taxable income from U.S. sources and taxable income from sources outside the United States.

One reason Congress cited for enacting the original two-year moratorium was that some foreign countries do not allow deductions under their tax laws for expenses of research activities conducted in the United States. Taxpayers argued that this disallowance caused U.S.-based research to be disadvantaged. First, U.S.-based research expense is deemed to be allocated to a foreign country which may not recognize that such amount is deductible as an expense. The allocation of this U.S.-based research expense to foreign sources had the effect of reducing the foreign tax credit of

U.S. taxpayers. Because those taxpayers could take their deductions if the research occurred in the foreign country, taxpayers argued that there was an incentive to shift their research expenditures to those foreign countries whose laws disallow tax deductions for research activities conducted in the United States but allow tax deductions for research expenditures incurred locally.

Accordingly, Congress concluded that the Treasury Department should study the impact of the allocation of research expenses under the 1977 regulation on U.S.-based research activities and on the availability of the foreign tax credit. Pending the outcome of the study, Congress concluded that expenses should be charged to the cost of generating U.S. source income, regardless of whether such research was a direct or indirect cost of producing foreign source income.

On the ground that a reduction in research and development might adversely affect the competitive position of the United States, the 1983 Treasury report recommended the two-year extension of the moratorium that was ultimately enacted by Congress in 1984. The extension was intended to allow Congress to consider further the results of the Treasury study.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (the "1985 Act") extended the moratorium on the application of the research and experimental expense allocation rules of the 1977 regulation generally for one additional taxable year beginning after August 1, 1985, and on or before August 1, 1986.

The Tax Reform Act of 1986 (the "1986 Act") permitted the moratorium on application of the research expense allocation rules in regulation section 1.861-8 to expire. However, for taxable years beginning after August 1, 1986, and on or before August 1, 1987, application of the regulation was liberalized by the 1986 Act in three respects, which were intended by Congress to provide an additional tax incentive to conduct research in the United States while Congress analyzed whether any additional permanent incentive was necessary.

The first liberalization under the 1986 Act was that for the specified one-year period, 50 percent of all remaining amounts allowable as a deduction for qualified research and experimental expenditures (that is, research and experimental expenditures within the meaning of section 174 that are attributable to activities conducted in the United States) after allocation of legally required research expenses could be apportioned to U.S. source income and deducted from such income in determining the amount of taxable U.S. source income. The 1986 Act thus had the effect of increasing the automatic place-of-performance apportionment percentage for U.S.-based research expense from 30 percent to 50 percent.

The 1986 Act further provided that, for the specified one-year period, the portion of those amounts allowable as a deduction for qualified research and experimental expenditures that remained after any legal requirements allocation and the 50 percent automatic place-of-performance apportionment were apportioned either on the basis of sales or gross income. Thus, the 1986 Act's second effective liberalization of the regulation was to allow the automatic place-of-performance apportionment temporarily to taxpayers who elected to apportion expenses using the optional gross income

method, rather than only to taxpayers that used the standard sales method of apportionment. Third, the 1986 Act had the effect of temporarily suspending the regulatory rule that prohibits taxpayers from using the optional gross income method to reduce allocation of research expense to foreign source income by more than 50 percent of the amount that would be allocated to foreign source income under the sales method.

The temporary modifications made by the 1986 Act to the research expense allocation rules in regulation section 1.861-8 applied for purposes of computing taxable income from U.S. sources and taxable income from sources outside the United States. The modifications applied only to the allocation of expenditures for research and experimental activities conducted in the United States, and only for the purposes of geographic sourcing of income; the modifications did not apply for other purposes, such as the computation of combined taxable income of a FSC (or DISC) and its related supplier. Also, the modifications did not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of depreciable or depletable property to be used in connection with research or experimentation.

The Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") further modified, again on a temporary basis, the rules for sourcing research expenditures. These modifications were effective only for the first four months of a taxpayer's first taxable year beginning after August 1, 1987 (treating all applicable expenditures in that taxable year as if they were incurred ratably over the year). Under the 1988 Act, the treatment of research and development expenditures incurred to meet certain legal requirements was unchanged. After applying the legal requirements rule, however, the 1988 Act modifications provided that 64 percent of the U.S.-based research expenses remaining to be allocated and apportioned were allocated to U.S. source income and 64 percent of the remaining foreign-based research expenses were allocated to foreign source income. The remaining research expenditures treated as having been incurred during this four-month period were allocated and apportioned either on the basis of sales or gross income. However, if the gross income method of apportionment was utilized, the amount apportioned to foreign source income could be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

Generally, for the remainder of a taxpayer's first taxable year beginning after August 1, 1987 (and for subsequent taxable years), the rules set forth in regulation section 1.861-8 were applicable with respect to sourcing research and experimental expenditures.

The Omnibus Budget Reconciliation Act of 1989 (the "1989 Act") extended, again on a temporary basis, the rules for sourcing research expenditures that were contained in the 1988 Act. The 1989 Act also codified these statutory allocation rules in section 864(f) of the Internal Revenue Code. As codified in 1989, these rules were effective only for the first nine months of a taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990 (treating all applicable expenditures in that taxable year as if they were incurred ratably over the year). Under the 1989 Act, for the remainder of a taxpayer's first taxable year beginning after August

1, 1989, and before August 2, 1990 (and for subsequent taxable years), the rules set forth in regulation section 1.861–8 would have applied with respect to sourcing research and experimental expenditures.

The Omnibus Budget Reconciliation Act of 1990 (the "1990 Act") further extended the statutory allocation rules that were codified in the 1989 Act. Under the 1990 Act, the rules of section 864(f) apply to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991.

PRESIDENT'S BUDGET PROPOSAL

Under the President's fiscal year 1992 budget proposal, the statutory R&D allocation rules of section 864(f) would be extended for one year, so as to apply to all R&D expenses paid or incurred in taxable years beginning after August 1, 1991 and on or before August 1, 1992.[1]

EXPLANATION OF PROVISION

The bill temporarily extends the period for application of Code section 864(f), which provides statutory allocation rules that supersede the Treasury's research and experimentation expense allocation regulation for purposes of determining the source of taxable income. Following the period for which the statutory allocation rules are made applicable by the bill, the Treasury regulation would again apply.

EFFECTIVE DATE

The provision is effective for research expenses paid or incurred during the taxpayer's third taxable year beginning after August 1, 1989, and on or before August 1, 1992. In the case of the taxpayer's first taxable year beginning after August 1, 1991, however, the statutory allocation rule would apply only to research expenses paid or incurred during the first six months of that year.

2. Tax credit for qualified research expenditures (sec. 102 of the bill and sec. 41 of the Code)

PRESENT LAW

General rule

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1991.

A 20-percent tax credit also applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corpora-

[1] The Treasury Department's "General Explanations of the President's Budget Proposals Affecting Receipts erroneously describes the effective date of the proposal as "taxable years beginning after August 1, 1991 and ending on or before August 1, 1992."

tion as compared to such giving during a fixed-based period, as adjusted for inflation.[2]

Computation of allowable credit

Except for certain university basic research payments, the credit applies only to the extent that the taxpayer's qualified research expenditures for the taxable year exceed its base amount. The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years.

If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Relation to deduction

Deductions for qualified research expenditures allowed to a taxpayer under sec. 174 or any other provision are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

LEGISLATIVE BACKGROUND

The research credit initially was enacted in the Economic Recovery Tax Act of 1981 as a credit equal to 25 percent of the excess of qualified research expenses in the current year over the average of qualified research expenses in the prior three taxable years. The research credit was modified in the Tax Reform Act of 1986 which (1) extended the credit through December 31, 1988, (2) reduced the credit rate to 20 percent, (3) tightened the definition of research expenditures eligible for the credit, and (4) modified the university basic research credit.

The Technical and Miscellaneous Revenue Act of 1988 extended the credit for one additional year, through December 31, 1989. The 1988 Act also reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 50 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months (by prorating qualified expenses incurred before January 1, 1991). The 1989 Act also modified the method for calculating a taxpayer's base amount and further reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 100 percent of the research credit determined for the year.

---

[2] Expenditures paid or incurred for university basic research after December 31, 1991, are not eligible for the credit.

The Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991).

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budget proposal would make permanent the 20-percent research tax credit for qualified research expenditures and university basic research payments.

EXPLANATION OF PROVISION

The tax credit for qualified research expenditures (including university basic research payments) is extended for six months (i.e., for qualified expenses incurred through June 30, 1992).

3. Exclusion for employer-provided educational assistance (sec. 103 of the bill and sec. 127 of the Code)

PRESENT LAW

An employee's gross income and wages for income and employment tax purposes do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements (sec. 127). This exclusion, which expires for taxable years beginning after December 31, 1991, is limited to $5,250 of educational assistance with respect to an individual during a calendar year.

In the absence of the section 127 exclusion, an employee generally would be required to include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualified as a deductible job-related expense of the employee.

LEGISLATIVE BACKGROUND

The section 127 exclusion was first established on a temporary basis by the Revenue Act of 1978 (through 1983). It subsequently was extended, again on a temporary basis, by Public Law 98-611 (through 1985), by the Tax Reform Act of 1986 (through 1987), by the Technical and Miscellaneous Revenue Act of 1988 (through 1988), by the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and by the Omnibus Reconciliation Act of 1990 (through 1991). Public Law 98-611 adopted a $5,000 annual limit on the exclusion; this limit was subsequently raised to $5,250 in the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 made the exclusion inapplicable to graduate-level courses. The restriction on graduate-level courses was repealed by the Omnibus Reconciliation Act of 1990, effective for taxable years beginning after December 31, 1990.

EXPLANATION OF PROVISION

The exclusion from income for employer-provided educational assistance is extended through June 30, 1992. The exclusion is avail-

able with respect to amounts paid by the employer on or before June 30, 1992.

4. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (sec. 104 of the bill and secs. 120 and 501(c)(20) of the Code)

PRESENT LAW

Under present law, certain amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion is limited to an annual premium value of $70.

The exclusion for group legal services benefits expires for taxable years begining after December 31, 1991.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expires for taxable years beginning after December 31, 1991.

LEGISLATIVE BACKGROUND

The section 120 exclusion and the section 501(c)(20) exemption were enacted initially on a temporary basis by the Tax Reform Act of 1976 (through 1981). They subsequently were extended, again on a temporary basis, by the Economic Recovery Act of 1981 (through 1984), Public Law 98-612 (through 1985), the Tax Reform Act of 1986 (through 1987), the Technical and Miscellaneous Revenue Act of 1988 (through 1988), the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and the Omnibus Reconciliation Act of 1990 (through 1991). The Technical and Miscellaneous Revenue Act of 1988 imposed the $70 annual limit on the amount of premium that may be excluded by the employee.

EXPLANATION OF PROVISION

The exclusion from income for employer-provided group legal services is extended through June 30, 1992. The exclusion is available with respect to amounts paid by an employer before July 1, 1992, for coverage under a qualified group legal services plan for periods before July 1, 1992. In addition, the tax-exempt status for organizations providing qualified group legal services is extended through taxable years beginning before July 1, 1992.

5. Targeted jobs tax credit (sec. 105 of the bill and sec. 51 of the Code)

PRESENT LAW

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups consist of individuals who are either recipients and payments

under means-tested transfer programs, economically disadvantaged, or disabled.

The credit generally is qual to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200,

The credit expires for individuals who begin work for an employer after December 31, 1991.

Authorization of appropriations

Present law authorizes appropriations for administrative and publicity expenses relating to the credit through December 31, 1991. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

LEGISLATIVE BACKGROUND

The targeted jobs tax credit was enacted by Congress in the Revenue Act of 1978 to replace an expiring credit for increased employment. As originally enacted, the targeted jobs tax credit was scheduled to apply to qualified wages paid before 1982.

The availability of the credit was successively extended by the Economic Recovery Tax Act of 1981 (ERTA) for one year (through 1982), by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) for two years (through 1984), and by the Deficit Reduction Act of 1984 (DEFRA) for one year (through 1985). The Tax Reform Act of 1986 (TRA 1986) extended the targeted jobs tax credit for three additional years (through 1988), with modifications. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) extended the credit for one year (through 1989), with modifications. The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) extended the credit for nine months (through September 30, 1990). Most recently, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) extended the credit for fifteen months (through 1991).

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budgetr proposal would extend the credit for one year. Therefore, the credit would be available for workers who begin work for the employer before January 1, 1993.

EXPLANATION OF PROVISION

The targeted jobs tax credit is extended for six months, so that it is available with respect to wages paid for employees who begin work for an employer before July 1, 1992.

6. Busines energy tax credits for solar and geothermal property (sec. 106 of the bill and sec. 48(a) of the Code)

PRESENT LAW

Under present law, nonrefundable business energy tax credits are allowed for 10 percent of the cost of qualified solar and geother-

mal energy property (Code sec. 48(a)). Solar energy property that qualifies for the credit includes any equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Qualifying geothermal property includes equipment which produces, distributes, or uses energy derived from a geothermal deposit, but, in the case of electricity generated by geothernal power, only up to (but not including) the electrical transmission stage.[3]

The business energy tax credits are currently scheduled to expire with respect to property placed in service after December 31, 1991.

LEGISLATIVE BACKGROUND

Ten-percent tax credits for qualifying solar and geothermal energy properties were enacted in the Energy Tax Act of 1978, effective after April 20, 1977, through December 31, 1982. In the Windfall Profit Tax Act of 1980, the solar and geothermal credits were extended through 1985, and the rates of these credits were increased to 15 percent. In the Tax Reform Act of 1986, the solar and geothermal credits were extended for three additional years (through 1988), at rates which phased down to 10 percent. An additional one-year extension (through 1989) of the solar and geothermal credits was provided in the Technical and Miscellaneous Revenue Act of 1988.

The solar and geothermal credits were extended for the nine-month period through September 30, 1990, in the Omnibus Budget Reconciliation Act of 1989. In the Omnibus Budget Reconciliation Act of 1990, these credits were extended for fifteen months through December 31, 1991.

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budget proposal would extend the 10-percent business credits for solar and geothermal property for one year, through December 31, 1992.

EXPLANATION OF PROVISION

The bill extends the business energy tax credits for qualifying solar and geothermal property placed in service through June 30, 1992.

7. Tax credit for low-income rental housing (sec. 107 of the bill and sec. 42 of the Code)

PRESENT LAW

A tax credit is allowed in annual installments over ten years for qualifying newly constructed or substantially rehabilitated low-income rental housing. For most qualifying housing, the credit has a present value of 70 percent of the cost of low-income housing units. For housing receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost of existing

[3] For purposes of the credit, a geothermal deposit is defined as a domestic geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor, whether or not under pressure (Code sec. 613(e)(2)).

housing (e.g., costs other than the required rehabilitation expenditures), the credit has a present value of 30 percent.

To qualify for the credit, a building owner generally must receive a low-income housing credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The annual credit ceiling for each State is $1.25 per resident per year.

The low-income housing credit is scheduled to expire after December 31, 1991.

LEGISLATIVE BACKGROUND

The low-income housing credit was enacted by the Tax Reform Act of 1986, with an expiration date of December 31, 1989. The credit was substantially revised and extended through December 31, 1990, by the Omnibus Budget Reconciliation Act of 1989 (the 1989 Act). To implement the equivalent of a partial-year extension of the credit, the 1989 Act reduced the annual low-income housing credit ceiling for 1990. In years prior to 1990, the credit ceiling for each State was $1.25 multiplied by the State's population. For calendar year 1990, that amount was reduced by 25 percent from $1.25 to $0.9375.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) restored the State credit ceiling applicable for 1990 to $1.25 per resident of the State, and extended authority to allocate the credit through December 31, 1991. In addition, the 1990 Act made technical and other modifications to the credit.

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budget proposal would extend the current low-income housing credit for one year, through December 31, 1992.

EXPLANATION OF PROVISION

The low-income housing credit is extended through June 30, 1992. The credit ceiling for each State is $1.25 per resident of the State for the period during 1992 for which the credit is extended.

8. Qualified mortgage bonds and mortgage credit certificates (sec. 108 of the bill and secs. 143 and 25 of the Code)

PRESENT LAW

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used (net of costs of issuance and a reasonably required reserve fund) to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds (sec. 143). The QMBs must meet purchase price, income eligibility limitations, and other restrictions.

housing (e.g., costs other than the required rehabilitation expenditures), the credit has a present value of 30 percent.

To qualify for the credit, a building owner generally must receive a low-income housing credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The annual credit ceiling for each State is $1.25 per resident per year.

The low-income housing credit is scheduled to expire after December 31, 1991.

LEGISLATIVE BACKGROUND

The low-income housing credit was enacted by the Tax Reform Act of 1986, with an expiration date of December 31, 1989. The credit was substantially revised and extended through December 31, 1990, by the Omnibus Budget Reconciliation Act of 1989 (the 1989 Act). To implement the equivalent of a partial-year extension of the credit, the 1989 Act reduced the annual low-income housing credit ceiling for 1990. In years prior to 1990, the credit ceiling for each State was $1.25 multiplied by the State's population. For calendar year 1990, that amount was reduced by 25 percent from $1.25 to $0.9375.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) restored the State credit ceiling applicable for 1990 to $1.25 per resident of the State, and extended authority to allocate the credit through December 31, 1991. In addition, the 1990 Act made technical and other modifications to the credit.

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budget proposal would extend the current low-income housing credit for one year, through December 31, 1992.

EXPLANATION OF PROVISION

The low-income housing credit is extended through June 30, 1992. The credit ceiling for each State is $1.25 per resident of the State for the period during 1992 for which the credit is extended.

8. Qualified mortgage bonds and mortgage credit certificates (sec. 108 of the bill and secs. 143 and 25 of the Code)

PRESENT LAW

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used (net of costs of issuance and a reasonably required reserve fund) to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds (sec. 143). The QMBs must meet purchase price, income eligibility limitations, and other restrictions.

Mortgage credit certificates

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates ("MCCs") (sec. 25). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in QMB volume authority to issue MCCs expires after December 31, 1991.

LEGISLATIVE BACKGROUND

The Mortgage Subsidy Bond Tax Act of 1980 first imposed restrictions on the ability of State and local governments to issue tax-exempt bonds to finance mortgage loans on single-family, owner-occupied residences. These restrictions included many of the rules applicable under present law.

Under the 1980 Act, the authority of State and local governments to issue QMBs expired on December 31, 1983. The Deficit Reduction Act of 1984 extended this authority (with modifications) through December 31, 1987, and enacted the MCC alternative to QMBs.

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for one year (through December 31, 1988) by the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 extended the authority to issue QMBs and the election to trade in bond volume authority to issue MCCs for another year (through December 31, 1989), with substantial modifications. The Omnibus Budget Reconciliation of 1989 extended the expiration date of this authority nine months (through September 30, 1990).

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for 15 months, (through December 31, 1991) by the Omnibus Budget Reconciliation Act of 1990. The 1990 Act also made several modifications to the recapture provisions. These modifications were effective as if enacted in the Technical and Miscellaneous Revenue Act of 1988 (the Act which originally enacted the recapture provisions).

EXPLANATION OF PROVISIONS

The authority of State and local governments to issue QMBs and to elect to trade in bond volume authority to issue MCCs is extended through June 30, 1992.

9. Qualified small-issue manufacturing bonds (sec. 109 of the bill and sec. 144(a) of the Code)

PRESENT LAW

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the bond proceeds is used

to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds"). Qualified small-issue bonds are issued having an aggregate authorized face amount of $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million. Special limits apply to these bonds for first-time farmers.

Authority to issue qualified small-issue bonds expires after December 31, 1991.

LEGISLATIVE BACKGROUND

Substantial modifications to the tax treatment of exempt small-issue industrial development bonds were made by the Tax Equity and Fiscal Responsibility Act of 1982. The 1982 Act also provided that the authority to issue exempt small-issue bonds would expire after December 31, 1986. The Deficit Reduction Act of 1984 limited the small-issue bond exception to financing for manufacturing and farming facilities, effective after December 31, 1986, and extended the expiration date for these bonds to December 31, 1988. The Tax Reform Act of 1986 extended that date to December 31, 1989.

The Technical and Miscellaneous Revenues Act of 1988 clarified the definition of manufacturing to provide that up to 25 percent of the proceeds of qualified small issue bonds may be used to finance ancillary activities which are carried out at the manufacturing site. The Omnibus Budget Reconciliation Act of 1989 extended the expiration date to September 30, 1990. The Omnibus Budget Reconciliation Act of 1990 extended that date to December 31, 1991.

EXPLANATION OF PROVISION

The authority to issue qualified small-issue bonds is extended through June 30, 1992.

10. Deduction for health insurance costs of self-employed individuals (sec. 110 of the bill and sec. 162(1) of the Code)

PRESENT LAW

Under present law, an employer's contribution to a plan providing accident or health coverage is excludable from an employee's income (sec. 106). No equivalent exclusion is provided for self-employed individuals (i.e., sole proprietors or partners in a partnership).

However, present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. This deduction is allowable in calculating adjusted gross income. The 25-percent deduction is also available to a more than 2-percent shareholder of an S corporation.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The 25-percent deduction expires for taxable years beginning after December 31, 1991.

LEGISLATIVE BACKGROUND

The 25-percent deduction for the health insurance costs of self-employed individuals was enacted on a temporary basis by the Tax Reform Act of 1986 (for taxable years beginning before January 1, 1990). Certain technical corrections to the provision were made by the Technical and Miscellaneous Revenue Act of 1988. The Omnibus Budget Reconciliation Act of 1989 extended the deduction for 9 months (for taxable years beginning before October 1, 1990) and clarified that the deduction is available to certain S corporation shareholders. The Omnibus Reconciliation Act of 1990 extended the deduction through 1991.

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 1992 budget proposal would extend for one year the 25-percent deduction for health insurance costs of self-employed individuals.

EXPLANATION OF PROVISION

The 25-percent deduction for health insurance costs of self-employed individuals is extended through June 30, 1992. The deduction is available with respect to amounts paid before July 1, 1992, for insurance coverage for periods before July 1, 1992.

For purposes of the earned income limitation on the deduction, in the case of any taxable year beginning in 1991 the amount of earned income taken into account is the amount that bears the same ratio to the total amount of earned income for such taxable year as the number of months in the taxable year ending before July 1, 1992, bears to the total number of months in such taxable year.

11. Tax credit for orphan clinical drug testing expenses (sec. 111 of the bill and sec. 28 of the Code)

PRESENT LAW

A 50-percent nonrefundable tax credit is allowed for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs, generally referred to as orphan drugs, for rare diseases or conditions. Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

LEGISLATIVE BACKGROUND

This provision was enacted initially in the Orphan Drug Act of 1983, and was scheduled to expire after 1987. The credit was extended for three years in the Tax Reform Act of 1986, through December 31, 1990. The Omnibus Budget Reconciliation Act of 1990 extended the credit for one year, through December 31, 1991.

EXPLANATION OF PROVISION

The provision extends the orphan drug tax credit for six months (i.e., for qualified clinical testing expenses incurred through June 30, 1992).

12. Minimum tax exception for gifts of appreciated tangible property (sec. 112 of the bill and sec. 57(a)(6) of the Code)

PRESENT LAW

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[4] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis. However, in the case of any taxable year beginning in 1991, this rule does not apply to contributions of tangible personal property.[5]

LEGISLATIVE BACKGROUND

The Tax Reform Act of 1986 treated the amount by which the value of a charitable contribution of capital gain property exceeded the basis of the property as a minimum tax preference.

The Omnibus Budget Reconciliation Act of 1990 provided that, in the case of any taxable year beginning in 1991, this rule does not apply to a contribution of tangible personal property.

EXPLANATION OF PROVISION

The rule that charitable contributions of tangible personal property are not treated as a minimum tax preference item is extended for six months (i.e., for contributions made through June 30, 1992).[6]

---

[4] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

[5] With respect to contributions made during any taxable year beginning in 1991, *see* Rev. Rul. 90-111, 1990-2 C.B. 30.

[6] The bill does not affect the present-law treatment of contributions made in taxable years beginning before 1992.

III. Description of Revenue—Raising Provisions

1. Modify estimated tax payment rules for large corporations (sec. 201 of the bill and sec. 6655 of the Code)

PRESENT LAW

A corporation is subject to an addition to tax for any underpayment of estimated tax. A corporation does not have timely estimated tax payments that total at least 90 percent of the tax liability shown on the return for the current taxable year. In addition, a corporation may annualize its taxable income and make estimated tax payments based on 90 percent of the tax liability attributable to such annualized income.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to this estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

EXPLANATION OF PROVISION

For taxable years beginning in 1992, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments will be required to base its estimated tax payments on 93 percent (rather than 90 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis. The applicable percentage will be 94 (rather than 93) percent in 1993, 94 percent in 1994, 95 percent in 1995, and 95 percent in 1996.

The provision does not change the present-law availability of the 100 percent of last year's liability safe harbor for small corporations. In addition, as under present law, the first quarter's estimated tax payment for a large corporation may be based on 100 percent of the prior year's tax liability.

EFFECTIVE DATE

The provision will be effective for estimated tax payments with respect to taxable years beginning after December 31, 1997.

IV. Budget Effects of the Bill

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 3909.

ESTIMATED REVENUE EFFECTS OF THE TAX EXTENSION ACT OF 1991—FISCAL YEARS 1992–96

[In millions of dollars]

Provision	1992	1993	1994	1995	1996	1992–96
A. Extend Expiring Provisions Through June 30, 1992:						
1. Employer-provided educational assistance	−180					−180
2. Group legal services	−55					−55

ESTIMATED REVENUE EFFECTS OF THE TAX EXTENSION ACT OF 1991—FISCAL YEARS 1992–96—Continued

[In millions of dollars]

Provision	1992	1993	1994	1995	1996	1992–96
3. Health insurance deduction for self employed	−103	−55				−158
4. Mortgage revenue bonds and mortgage credit certificates	−22	−55	−63	−59	−56	−255
5. Qualified small-issue manufacturing bonds	−18	−46	−52	−47	−42	−205
6. Foreign allocation of R&D [1]	−250	−190				−440
7. Research and experimentation tax credit	−348	−265	−66	−42	−21	−742
8. Low-income housing tax credit	−40	−150	−235	−250	−250	−925
9. Targeted jobs tax credit	−35	−60	−40	−18	−10	−163
10. Business energy tax credits (solar and geothermal property)	−13	−14	−6	−3	−1	−37
11. Orphan drug tax credit	−2	−3				−5
12. Minimum tax exemption for gifts of appreciated tangible property	−6	−16	6	−2	−2	−19
Subtotal: Part A	−1,072	−854	−456	−421	−382	−3,184
B. Corporate Estimated Tax: 1. Modify 90% safe harbor for corporate estimated tax payments [2]	1,477	808	148	591	171	3,197
Grand total	405	−46	−308	170	−211	13

[1] Effective for the first 6 months of the taxpayer's 1st taxable year beginning after Aug. 1, 1991.
[2] Percent of current tax: 93 percent for 1992, 94 percent for 1993, 94 percent for 1994, 95 percent for 1995, and 95 percent for 1996.

Notes.—Proposals estimated without accounting for possible interactions. Details may not add to totals due to rounding.

V. Vote of the Committee and Other Matters to Be Discussed Under House Rules

A. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(b) of rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, H.R. 3909. The bill was ordered favorably reported by voice vote.

B. OTHER MATTERS

In compliance with clause 2(l)(3) and 2(l)(4) of rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 3909.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to extension of the provisions scheduled to expire in 1991 and with respect to corporate estimated tax payments that the committee concluded that it is appropriate to enact the provisions contained in the bill.

The Committee on Ways and Means held public hearings on the President's fiscal year 1992 budget proposals and expiring tax provisions on March 5–7, 12–13 and April 9–10, 1991.

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Congressional Budget Office, the committee states that the changes made to existing law by this bill as reported involve increased tax expenditures of $1.1 billion for fiscal year 1992, $.8

billion for fiscal year 1993, $.5 billion for fiscal year 1994, $.4 billion for fiscal year 1995, and $.4 billion for fiscal year 1996.

Budget Authority

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Congressional Budget Office, the committee states that the changes made by the bill as reported involve no new budget authority.

Congressional Budget Office Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Congressional Budget Office has examined the committee's budget estimates (as indicated in Part III of this report), and submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 25, 1991.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office concurs with the revenue estimate provided by the Joint Committee on Taxation for the Tax Extension Act of 1991, as ordered reported by the House Committee on Ways and Means on November 25, 1991. The Tax Extension Act extends twelve expiring tax provisions for six months and increases the safe harbor percentage for corporation estimated income tax payments. Enactment of the bill would increase revenues by $0.405 billion in fiscal year 1992 and by $0.013 billion over the 1992–1996 period.

The bill would affect revenues and thus would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a result, the estimate required under Clause 8 of House Rule XXI also is attached.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Changes in outlays	(1)	(1)	(1)	(1)
Changes in receipts	405	−46	−308	170

[1] Not applicable.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226–2720.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been sub-

mitted to the committee by the Committee on Government Operations regarding the subject of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have any significant overall inflationary impact on prices and costs in the operation of the national economy.

○